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NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

TONY CORONADO

PETITIONER,

V.

UNITED STATES OF AMERICA,

RESPONDENT.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI -- CRIMINAL CASE

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QUESTIONS PRESENTED

Was the arrest of Tony Coronado based upon mere suspicion, not probable cause?

Did the affidavit used to obtain a search warrant contain knowing and intentional misrepresentations made with reckless disregard for the truth?

Did the district court err in not granting a mistrial based upon the government's attempt to introduce four checks unrelated to the present case?

Was the evidence presented sufficient for a finding of guilty by the jury on all counts against Tony Coronado?

Did comments by the district judge during sentencing concerning the lack of

remorse shown by Tony Coronado constitute a Fifth Amendment violation, and the resulting maximum sentence imposed on Tony Coronado constitute an abuse of judicial discretion?

PARTIES TO THE PROCEEDING BELOW

The parties to the proceeding in the United States Court of Appeals for the Fifth Circuit were United States of America, Plaintiff-Appellee and Ralph Medina Arce, Tony Coronado and Carlos Roque Pina, Defendants-Appellants.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

TONY CORONADO,

PETITIONER,

V.

UNITED STATES OF AMERICA,

RESPONDENT.

PETITION FOR CERTIORARI -- CRIMINAL CASE

Petitioner prays that a Writ of Certiorari issue to review judgment of the United States Court of Appeals for the Fifth Circuit entered in the above case on December 29, 1980.

OPINIONS BELOW

The opinion of the U.S. Court of Appeals for the Fifth Circuit printed in Appendix A, infra, p. A-1, is not yet officially reported. The judgment of the U.S. District Court for the Western District of Texas, San Antonio Division, printed in Appendix B, infra, p. B-1, was not reported. The judgment of the Court of Appeals, printed in Appendix C, infra, p. C-1, was not reported. The order of the Court of Appeals denying rehearing, printed in Appendix D, infra, p. D-1, was not reported.

JURISDICTION

The judgment of the U.S. Court of Appeals for the Fifth Circuit, printed in Appendix C, infra, p. C-1, was

entered on December 29, 1980. The order of the Court of Appeals denying Petitioner's Motion for Rehearing, printed in Appendix D, infra, p. D-1 , was entered on February 3, 1981. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Fourth Amendment of the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and persons or things to be seized.

2. The Fifth Amendment of the United States Constitution provides:

> No person shall be held to answer for capital, or otherwise infamous

crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

3. The Fourteenth Amendment of the United States Constitution provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

4. Petitioner was prosecuted for Count 1 under the provisions of Title 18, United States Code, Section

371 (1976), which provides:

> §371. Conspiracy to commit offense or to defraud United States
>
> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.
>
> If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

5. Petitioner was prosecuted for Counts 2, 3 and 4 under the provisions of Title 18, United States Code, Section 1708 (1976), which provides:

> §1708. Theft or receipt of stolen mail matter generally
>
> Whoever steals, takes, or abstracts, or by fraud or deception obtains, or attempts so to obtain, from or out of any mail, post office, or station thereof, letter box, mail

receptacle, or any mail route or other authorized depository for mail matter, or from a letter or mail carrier, any letter, postal card, package, bag, or mail, or abstracts or removes from any such letter, package, bag, or mail, any article or thing contained therein, or secretes, embezzles, or destroys any such letter, postal card, package, bag, or mail, or any article or thing contained therein; or

Whoever steals, takes, or abstracts, or by fraud or deception obtains any letter, postal card, package, bag, or mail, or any article or thing contained therein which has been left for collection upon or adjacent to a collection box or other authorized depository of mail matter; or

Whoever buys, receives, or conceals, or unlawfully has in his possession, any letter, postal card, package, bag, or mail, or any article or thing contained therein, which has been so stolen, taken, embezzled, or abstracted, as herein described, knowing the same to have been stolen, taken, embezzled, or abstracted --

Shall be fined not more than $2,000 or imprisoned not more than five years, or both.

STATEMENT OF THE CASE

The facts material to the consideration of the questions presented are briefly stated as follows:

A. Course of Proceedings

On June 1, 1979, Tony Coronado was arrested in San Antonio, Texas, and on June 26, 1979, was indicted on four separate counts. Count One alleged that Tony Coronado and four individuals conspired to commit an offense against the United States of America by having in their possession three Treasury checks totaling nine-hundred thirteen dollars and fifty cents ($913.50) which had been stolen from the mail in violation of Title 18, United States Code, Section 371. Counts Two, Three and Four separately alleged that Tony Coronado and the four other individuals aided and

abetted by each other, unlawfully had in their possession the three Treasury checks in question in violation of Title 18, United States Code, Section 1708.

Defendants' Motion to Suppress Evidence was denied after a hearing on July 13, 1979 by the Honorable Adrian A. Spears. This cause was assigned to the Honorable Thomas M. Reveley, United States Circuit Judge for the Fifth Circuit on July 26, 1979.

On August 1, 1979, in a cause then pending in the United States District Court for the Western District of Texas, San Antonio Division, entitled United States of America v. Tony Coronado, Ralph Medina Arce, and Carlos Roque Pina, Cause No. SA-79-CR-106, Petitioner was found guilty by a jury on an indictment of four counts charging violations of Sections 371 and 1708 of Title 18 of the

United States Code (Appendix E, p. E-1).

On September 5, 1979, the district court entered Judgment and Petitioner was sentenced to the maximum sentence of 20 years. Judgment and sentence were affirmed by the U.S. Court of Appeals for the Fifth Circuit in United States v. Arce, No. 79-5539, printed in Appendix A, p. A-1 on December 29, 1980.

Petitioner timely filed a Petition for Rehearing before the United States Court of Appeals for the Fifth Circuit. On February 3, 1981, the Petition for Rehearing was denied. (Appendix D, p. D-1).

B. Relevant Facts Concerning the Conviction

A United States postal vehicle was burglarized on June 1, 1979, and mail addressed to residents between the 200

and 600 blocks of East Woodlawn Street, San Antonio, Texas, was taken therefrom. Included in the mail were several United States Treasury checks. Michael J. Jordan, Special Agent for the United States Secret Service, subsequently arrested the occupants of a vehicle outside the Master Art Studio, which produced photographic identification cards upon application. The driver of the vehicle was Tony Coronado, the Petitioner herein. A search warrant was issued and a search of the vehicle driven by Tony Coronado disclosed three United States Treasury checks in the glove compartment of the vehicle.

At no time during the trial was any evidence introduced by the government showing that Tony Coronado or any of the other individuals arrested and convicted were in any way involved in the break-in

of the United States postal vehicle. No evidence was offered by the United States government showing that Tony Coronado had ever had possession of the three checks in the glove compartment of the vehicle or that he knew that they were there. Additionally, fingerprinting by the government failed to disclose the fingerprints of Tony Coronado on the three checks, anywhere on the glove compartment door, or area in which the three checks were found. Likewise, there was no evidence offered that the vehicle belonged to Tony Coronado or that he had driven or been in the vehicle prior to the arrest.

The initial arrest and detention was based entirely on suspicion. No evidence was presented during the pre-trial hearing or at trial connecting Tony Coronado with the three other

individuals purchasing identification cards in the Master Art Studio. The only connection with the automobile driven by Tony Coronado and the Master Art Studio was the observation by Officer Jordan of one of the Defendants standing in the stairwell entrance of the studio "looking" in the direction of the automobile driven by Coronado. As admitted by Officer Jordan, at that time he was not even sure who the Defendant, Ralph Medina Arce, was or even if he was one of the individuals purchasing identification cards in the Studio.

The search warrant issued by the United States Magistrate Joseph Leonard was based upon an affidavit presented by Special Investigator James Rosinbaum who had not been at the scene and who had no personal knowledge of the events set forth in his affidavit. The search

warrant was based on an affidavit containing misinformation. The information contained in the affidavit was either given knowingly and intentionally, or with reckless disregard for the truth.

Defendants filed their Motion to Suppress the introduction of the three Treasury checks, the fruits of an unlawful search. The district court by Order dated July 13, 1979, overruled Defendants' motion to suppress all tangible evidence found as a result of the unlawful arrest and seizure and search.

The only evidence presented during trial connecting Tony Coronado to the criminal events was his presence in an automobile parked across the street from the Master Art Studio wherein three suspects were attempting to purchase identification cards. No evidence was presented of possession, actual breaking and

entering of the mail truck, theft, or attempt to pass any of the stolen checks by Tony Coronado.

The government had marked for identification and attempted to introduce four Treasury checks obtained from the trunk of the automobile in a subsequent second unlawful search of the vehicle, in an attempt to show a course and scheme of conduct on the part of the Defendants. The district court denied admission of the checks into evidence, however, refused to grant a mistrial on the basis of prejudice to the jury.

During the sentencing phase of the trial, the district court judge made certain remarks concerning lack of "remorse" shown by these Defendants, including Coronado, who exercised their Fifth Amendment rights by not testifying. Moreover, the district judge remarked

during sentencing as to his belief that Tony Coronado was the "ringleader" and the one most guilty, when no such allegation or offer of proof was ever made by the government. Tony Coronado was sentenced to the maximum sentence of twenty years on all four counts.

EXISTENCE OF JURISDICTION BELOW

Petitioner was convicted in the District Court for the Western District of Texas, San Antonio Division, of one count of conspiracy to knowingly possess stolen mail and three counts of aiding and abetting possession of stolen checks in violation of Sections 371 and 1708, Crimes and Criminal Procedure, 18 U.S.C. §§371, 1708 (1976). The jurisdiction of the district court was invoked pursuant to its authority to determine cases involving a federal question.

REASONS FOR GRANTING WRIT

The United States Court of Appeals for the Fifth Circuit has sanctioned such a departure by the District Court from the accepted and usual course of judicial proceedings as to call for an exercise of the Court's power of supervision. Specifically, the decision of the Court of Appeals should be reviewed for the special and important reasons more fully set forth below.

Arrest of Tony Coronado was not based on probable cause but mere suspicion.

The Fourth Amendment, which is applicable to the States through the Fourteenth Amendment, Mapp v. Ohio, 367 U.S. 343, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961), provides, "The right of the people to be secure in their persons. . . against unreasonable searches and seizures, shall not be violated, and no warrants

shall issue but upon probable cause. . ." (Emphasis added). Thus, for any arrest to be valid, and the fruits of that arrest to be used against the accused, there must have been "probable cause."

Probable cause exists where "the facts and circumstances within the officers' knowledge and of which they had reasonable trust worthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed (by the person to be arrested)." Brineger v. United States, 338 U.S. 160, 69 S.Ct. 1302, 1310-1311, 93 L.Ed. 1879 (1925), quoting Carrol v. United States, 267 U.S. 132, 162, 45 S.Ct. 280, 288, 69 L.Ed. 543 (1925). In light of the testimony given by the arresting officers, no such probable cause existed.

Examining the testimony of first, Officer Jordan, he admitted during the Motion to Supress hearing that he did not know that the person standing in the open stairwell leading up to the Master Art Studio was one of the three suspects trying to purchase identification cards. (Motion to Supress TR., p. 12). Furthermore, Officer Jordan's "suspicion" was based solely on the fact that the automobile driven by Tony Coronado was parked in a no parking zone across and up the street from the Master Art Studio. (Motion to Supress TR., p. 24, 25). There was nothing more within the knowledge of Officer Jordan, as shown from his testimony, that the man in the stairwell or the three occupants of the automobile had the slightest connection with the individuals upstairs attempting to purchase the alleged

identification cards.

In this connection, it is significant to note that Officer Jordan testified during the Motion to Supress hearing that he decided to stop, detain and arrest Tony Coronado solely on the basis of his observation of the man in the stairwell "looking at the object vehicle" parked across the street. As Officer Jordan stated, "in my estimation there was an association between Mr. Arce (the individual standing in the stairway) and that vehicle." (Motion to Supress TR., p. 24-25).

These observations by Officer Jordan and his decision to stop the vehicle and arrest the occupants was based on an illogical premise. First, he stated that he knew of no connection between either the vehicle or the individual standing in the stairwell with

the suspects inside the Master Art Studio. However, because of the alleged eye contact between Arce and the vehicle, and the fact that Arce began walking at the same time the vehicle began moving, he felt he had probable cause. Nowhere in his testimony, or in the testimony of any other witnesses, was the automobile's connection with the suspects upstairs in the Master Art Studio explained. Officer Jordan conceded during cross-examination that the connection was purely a "suspicion". (Motion to Supress TR., p. 52).

In the recent Supreme Court decision, Dunaway v. New York, 442 U.S. 200, 99 S.Ct. 2248, 2256-57, 60 L.Ed.2d 824, 1979, this court held:

> "The central importance of the probable cause requirement to the protection of

> a citizen's privacy afforded by the Fourth Amendment's guarantees cannot be compromised in this fashion. 'The requirement of probable cause has roots that are deep in our history.' Henry v. United States, 361 U.S. 98, 100, 80 S.Ct. 168, 170, 4 L.Ed.2d 134 (1959). Hostility to seizures based on mere suspicion was a prime motivation for the adoption of the Fourth Amendment, and decisions immediately after its adoption affirmed that common rumor or report, suspicion, or even 'strong reason to suspect' was not adequate to support a warrant for arrest. Ibid. footnotes omitted. The familiar threshold standard of probable cause for Fourth Amendment seizures reflects the benefits of extensive experience accomodating the factors relevant to the 'reasonableness' requirement of the Fourth Amendment, and provides the relative simplicity and clarity necessary to the implementation of a workable rule. Brineger v. United States, supra, 338 U.S., at 175-176, 69 S.Ct. at 1310-1311." (Emphasis added).

Officer Jordan and Inspector Casillas, through their own admissions, were without probable cause when they detained and arrested Tony Coronado.

Accordingly, the arrest and the subsequent "fruits" of the search obtained thereafter, were illegal and as such their use at trial constituted reversible error. This is true even if the search warrant had been obtained legally without the use of misinformation, since the Fourth Amendment rights of Tony Coronado had already been violated, so that the search warrant itself became the illegal offspring of an unconstitutional act which is thus void. See, Dunaway v. New York, 442 U.S. 200, 99 S.Ct. 2248, 2258-59, 60 L.Ed. 2d 824, (1979). See generally, United States v. Vasques, 534 F.2d 1142 (5th Cir. 1976).

This Misinformation in the Affidavit used to obtain a search warrant was given knowingly and intentionally or with reckless disregard for the truth.

Even if this Court should find that there was sufficient probable cause for the arrest of Tony Coronado, the subsequent search of the vehicle was illegal, in that the warrant was issued on misinformation contained in the supporting affidavit. James S. Rosinbaum, Special Investigator, United States Postal Inspection Service, was the affiant who testified to the United States Magistrate and ordered that a search warrant be obtained. In his affidavit he supplied two paragraphs containing misinformation, without which, the search warrant would not have been granted.

The U.S. Court of Appeals for the

Fifth Circuit held in United States v. Thomas, 489 F.2d 664 (5th Cir. 1973):

> "That affidavits containing misrepresentations are invalid if the error (1) was committed with an intent to deceive the magistrate, whether or not the error is material to the showing of probable cause; or (2) made non-intentionally, but the erroneous statement is material to the establishment of probable cause for the search."

489 F.2d at 669.

Defendant Coronado bases his claim of recklessness on the part of the affiant by comparing the language in the affidavit to that of the testimony given at trial. Paragraph 3 of the affidavit reads as follows:

> "At approximately 3:30 p.m., Mrs. Billie Grillo, contacted SA Michael Jordan, U.S. Secret Service, and informed him that one of the individuals who had previously purchased an ID card for an address on East Woodlawn was back attempting to purchase a second card."

However, during the trial Mrs. Billie Grillo testified that at no time on the date of June 1, 1979, did she tell any of the officers investigating the case that the individuals who were trying to purchase identification cards were the ones who had earlier purchased identification cards. (TR. Vol I, p. 113). Therefore, this information given to the Magistrate was false, whether intentional or with "reckless disregard" and was the same information upon which the Magistrate relied to issue the search warrant.

Moreover, the misinformation contained in paragraph 4 of the affidavit was not factually true. Paragraph 4 of the affidavit reads as follows:

> "Upon arrival, Billie Grillo identified 4 subjects who were in the store and 3 subjects in a 1970 Pontiac, 2-door bronze, bearing Texas license SRM-40, who were attempting to purchase ID cards."

At the Motion to Supress Hearing Officer Jordan stated that Mrs. Grillo connected the three individuals in the vehicle with the individuals attempting to purchase identification cards. (Motion to Supress TR., p. 43, 44). However, during the trial of this cause, Mrs. Grillo contradicted Officer Jordan and denied that she ever connected any of the occupants of the vehicle parked across the street with the suspects inside the Studio purchasing identification cards. (TR., Vol I, p. 113, 114).

Thus, after examining the testimony of the "informant", Mrs. Grillo, it is

obvious that someone is not telling the truth, either intentionally or with "reckless disregard" for the truth. Even the Assistant United States Attorney handling the case admitted that there were mistakes in the affidavit. (TR., Vol I., p. 153, 155). Therefore, the United States Court of Appeals erred in affirming the district court's decision to grant the Motion to Supress evidence relating to the fruits obtaining from an improperly obtained search warrant.

When the affidavit of Officer Rosinbaum is examined with paragraph 3 and 4 deleted, it is obvious that an independent Magistrate could not determine that probable cause existed and that a search warrant should have been issued. Without the information contained in paragraphs 3 and 4, the affidavit is merely a statement of the

events leading up to the arrest (noting that in the contents of the first and second paragraphs no information is given which even remotely relates to Tony Coronado and the theft of the checks), and the events after the arrest. Moreover, paragraph 5, (the last paragraph) only relates to the information that three of the seven arrested were seated in the front seat of the vehicle. No information appearing in paragraphs one, two or three standing alone connect the automobile or its occupants to the theft and thus, the warrant was issued without probable cause and the fruits of that search should have been excluded.

In addition, the United States Court of Appeals erroneously affirmed the district court order to introduce the checks and refusal to recognize the

uncontested testimony by the "informant" with respect to the information given in paragraphs three and four. When the Defendant's reurged their Motion to Supress during trial based upon the testimony of Mrs. Grillo, the district court responded:

> "THE COURT: Mr. Rocha, they have proven probable cause which was before the Magistrate. They do not have to prove every statement in that affidavit again today to get the fruits of that warrant admissible."

(TR., Vol. I., p. 157). In the decision of this Court, Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667, (1978), the Supreme Court held:

> ". . . where the Defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant and the warrant affidavit, and if the alleged false statement is necessary to the finding of probable cause, the Fourth Amendment requires

> that a hearing be held at Defendant's request. In the event that at that hearing the allegation of perjury or reckless disregard is established by the Defendant by a perponderance of the evidence, and with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit."

The decision of the Court of Appeals affirming the district court's failure to require an evidentiary hearing on this matter when brought to its attention is in direct conflict with the Supreme Court holding in Franks. This failure underscores the problem attendant to one judge conducting the Motion to Supress Hearing and a second conducting the trial. Furthermore, the transcripts of the trial and Motion to Supress Hearing more than adequately

provides this court with the necessary facts to make the determination that (1) the search warrant was granted based upon false information and that such information was provided to the Magistrate with "reckless disregard" as to its truth, (2) without that information the warrant would not and will not stand on its face, (3) without the "fruits" of the search, the case as presented cannot stand on its merit and the conviction should be reversed.

The District court committed reversible error by not granting a mistrial after the Government attempted to introduce into evidence four checks which were unrelated to the present case.

During the direct examination of Officer Jordan, the Government attempted to introduce into evidence four checks that were located in the trunk compartment of the aforementioned vehicle as a

result of a second illegal search. (TR., Vol. I, p. 177-178). As later conceded during further examination of Officer Jordan, these checks were located on June 23, 1979, some three weeks after the initial search conducted following the arrest on June 1, 1979. (TR., Vol I, p. 180). Upon the attempt to introduce the checks into evidence, the Defendants strenuously objected to their admission due to their highly prejudicial nature in that the subsequent search and finding of the checks on June 23, 1979, were independent of the res gestae, that the Government had not previously informed the Defendants that these checks would be entered into evidence, and due to a total lack of notice to the Defendants to permit them an adequate opportunity to prepare a response. (TR., Vol. I.,

p. 180-188). Petitioner contends now, as it did in trial, that the mere fact of their being brought out was so prejudicial that even the court's instructions to the jury to disregard that testimony could not remove it from their memory. (TR., Vol. I, p. 189).

The attempted introduction of these four separate checks by the Government was nothing less than a flagrant attempt to bolster an already weak case. The attorneys for the Defendants' during voir dire examination of Officer Jordan informed the trial court that they had no prior information that these checks had been found or would be offered into evidence against the Defendants'. Further, the limited instruction given by the district court could not have possibly removed the prejudice which had already been instilled in the jurors

minds and therefore the failure to grant a mistrial was error. (TR., Vol. I, p. 189-190).

The evidence presented during trial was insufficient for a finding of guilty by the jury on all counts against Tony Coronado.

Before an issue can or should be left to a jury to decide there should be more than a scintilla of evidence upon which reasonable minds can differ. This test was not met by the Government and therefore at the end of the trial proceeding the trial court should have entered a verdict of not guilty to Tony Coronado.

In the more than 300 pages of testimony, not once did any of the Government's witnesses testify as to knowledge, personal or otherwise, that Tony Coronado was in any way involved in the Postal vehicle breakin; that Tony

Coronado knew there were checks in the glove compartment directly in front of James Perez; or that Tony Coronado knew there were were individuals purchasing identification cards in the Master Art Studio. Most telling is the absence of any fingerprint evidence connecting Tony Coronado to physical possession of any checks or the glove compartment area where they were found. Obviously, the Government knew whose fingerprints were on the glove compartment and that they did not belong to Tony Coronado.

The only inference the Government was able to present to the jury was the fact that three checks had been found in the glove compartment of the searched vehicle in which Tony Coronado was an occupant at the time of the arrest. All the Government has succeeded in doing is make a case of guilt by asso-

ciation. Moreover, the testimony during trial showed that Tony Coronado was not in a position to even have control over the checks since he was in the drivers seat separated by two individuals, the furthest of which was directly in front of the glove compartment containing the checks.

The only relationship the Government ever proved with regard to Tony Coronado and the three suspects trying to purchase identification cards in the Master Art Studio, was the observation of Officer Jordan with respect to the then unidentified person ("Arce") looking in the general direction of the automobile Tony Coronado was occupying. At best, this was nothing more than an aborted attempt by the Government to establish guilt through association and as such cannot be upheld.

Comments by the trial judge during sentencing as to the lack of remorse on the part of Tony Coronado and the other Defendants violated their Fifth Amendment rights, resulting in abuse of judicial discretion through the imposition of the maximum sentence permitted by Tony Coronado.

In Thomas v. United States, 368 F.2d 941 (5th Cir. 1966), a Defendant was sentenced a maximum penalty entirely upon, at least in the court's opinion, the fact that he failed to "come clean and make a clean breast of this thing once and for all . . . " Id. at 944. The court then went on to state a well established doctrine, "[w]hen Thomas received harsher punishment than the court would have decreed had he waived his Fifth Amendment rights, he paid a judicially imposed penalty for exercising his constitutional guaranteed rights." Id. at 946. Petitioner contends that

the Court of Appeals sanctioned the error of the district court, the error which Thomas was trying to prevent, i.e., a trial court's deliberate attempt to force a Defendant to relinquish his Fifth Amendment rights and testify as to any remorse or his involvment in the alleged transaction. See also, United States v. Laca, 499 F.2d 922, 927, 928, (5th Cir. 1974).

At no time during the trial did Tony Coronado take the stand nor did the Government present any specific testimony as to his participation in the transaction beyond that of the four general counts and the indictment. With conscious disregard to this, the trial court made several serious statements which were not only unfounded, but were an abuse of judicial discretion harking back to the days of the Star Chamber.

The district court stated unequivocably:

> "[I] just can't believe you can be trusted Mr. Coronado . . . but I feel that you are fully responsible for all of this, more than any of the others, certainly they all bear their own responsibility. . . I think you are a dishonest person as of now. I don't know whether prison will do you any good. . . but this is the reason, that I am going to give you the maximum."

As previously stated, not once was any evidence offered by the Government or was there a shred of testimony admitted into the record that Tony Coronado was the "ring leader" of any of these transactions. This personal attack by the trial court upon Tony Coronado was not only unwarranted, but in violation of his Fifth Amendment rights and clearly unsupported by any facts presented during the trial.

The Petitioner recognizes a district

court's autonomy to base its sentence upon its personal observations when they are related to testimony presented at trial. However, when no evidence is presented, as here, connecting the Petitioner to the charges made by the trial court, the Petitioner was made a victim of an unwarranted, unauthorized, and abusive personal attack by the judge.

The Court of Appeals likewise erred in approving the following statement of the district court judge in light of the holding Thomas:

> "Well, let me say that in addition to looking for any sincere regret or remorse, the principle thing that I have been trying to fret out here in the eyes and maybe the voice of the Defendant, to look for a show of honesty and show that this experience has gotten through and gotten their attention so to speak."

(TR., Vol. II, p. 490). (Emphasis added)

Conclusion

It is respectfully submitted that this Court should exercise its power of supervision over the federal courts. Tony Coronado was arrested without the constitutionally required probable cause and the vehicle he was occupying was then searched based upon a warrant supported by an affidavit made without personal knowledge and containing gross misstatements made with a reckless disregard for the truth. As a result of these improper actions and violent intrusions upon his Fourth Amendment rights, Tony Coronado was tried and convicted on conspiracy and possession charges, and sentenced to 20 years for three Treasury checks totaling $913.50.

Further aggravating the injustice were the remarks made by the district court judge during the sentencing which

effectively penalized the accused for having exercised his Fifth Amendment rights, and the abuse of discretion shown by the imposition of the maximum penalty allowed by law.

Accordingly, for the reasons set forth above, it is respectfully submitted that this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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UNITED STATES of America,
Plaintiff-Appellee,

v.

Ralph Medina ARCE, Tony Coronado
and Carlos Roque Pina,
Defendants-Appellants.

No. 79-5539.

United States Court of Appeals,
Fifth Circuit.
Unit A

December 29, 1980.

Appeals from the United States District Court for the Western District of Texas.

Before COLEMAN, Chief Judge, RUBIN and WILLIAMS, Circuit Judges.

COLEMAN, Chief Judge.

In company with Sylvia Coronado and Alvin Valinzuela, Ralph Medina Arce, Tony Coronado, and Carlos Roque Pina were convicted of (1) conspiracy to knowingly possess stolen mail; (2) aiding and abetting possession of a

stolen check which had been mailed to Miguel Hernandez; (3) aiding and abetting possession of a stolen check which had been mailed to Tomas Valdez; and (4) aiding and abetting possession of a stolen check which had been mailed to Elijio Aguillon, in violation of 18 U.S.C.A. §§ 371, 1708 (1976).[1/] Arce was sentenced to a term of 10 years, Coronado to a 20-year term, and Pina to an 8-year term.[2/]

Reversal is sought on the following grounds:

(1) The evidence is insufficient to support the convictions in that the government failed to establish beyond a reasonable doubt either a connection among the appellants or possession of or control over the checks by any appellant

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1/ Footnotes follow in full at page A-26.

(Arce, Coronado, and Pina);

(2) The district court erred in denying the motion to suppress the evidence obtained in a search based on a search warrant in that:

(a) the affidavit failed to provide information concerning an informant's credibility or the reliability of her information (Pina);

(b) the affidavit contained knowing and intentional misrepresentations made with reckless disregard for the truth (Coronado and Pina; Arce conceded both points on oral argument);

(3) The arrest of Coronado was based upon mere suspicion, not probable cause (Coronado);

(4) The district court erred in not granting a mistrial based upon the government's attempt to introduce four additional stolen checks (Coronado);

(5) Comments by the trial judge concerning Coronado's lack of remorse during sentencing constituted a Fifth Amendment violation, and the resulting maximum sentence imposed on him was an abuse of judicial discretion (Coronado).

Finding these attacks to be without merit, we affirm the convictions in each and every particular.

I.

Facts

Viewing the evidence in the light most favorable to the government, Glasser v. United States, 315 U.S. 60, 80, 62 S.Ct. 457, 469, 86 L.Ed. 680 (1942), and resolving all reasonable inferences and credibility choices in support of the jury verdict, United States v. Slone, 601 F.2d 800, 803 (5th Cir. 1979); United States v. Henderson, 588 F.2d 157, 161 (5th Cir.), cert. denied, 440

U.S. 975, 99 S.Ct. 1544, 59 L.Ed.2d 794 (1979), the facts will not be recited.

On June 1, 1979, sometime between 10 and 11 o'clock, a.m., in San Antonio, Texas, a postal jeep, left unattended while the letter carrier delivered mail door-to-door, was burglarized. Thus taken were between 250 and 300 pieces of mail destined for addressees from 200 to 600 East Woodlawn Street, San Antonio. Social Security checks were in the mail for delivery that day and addressees included Miguel A. Hernandez, 315 East Woodlawn Street; Elijio H. Aguillon, 305 East Woodlawn Street; and Tomas A. Valdez, 418 East Woodlawn Street. They did not get the checks.

No witnesses were found, or adduced, who saw any of the appellants break into the postal jeep, or take anything from it, or in actual physical possession of

any government checks. So, for a time, the invaders had brought off a "perfect" crime, but they had one more river to cross. The checks were worthless unless, in some manner, they could be cashed.

Michael Jordan, special agent for the United States Secret Service, learned of the burglary of the postal jeep. Right straight, he began calling San Antonio producers of photographic identification cards, asking them to watch for anything involving addresses from 200-600 East Woodlawn. The trap was that quickly and that easily set. He talked to Mrs. Sam Grillo, co-owner of Master Arts Studio, 148 East Houston Street. He found out that already there had been two successful visits in and out of the trap. Mrs. Grillo checked those cards which had been sold earlier that day and found that two people had

used addresses within the stated area. One card had been issued to Marcelino Fuentes, 402 East Woodlawn. Jordan asked Mrs. Grillo to call him if anyone else came in using an address from 200 to 600 East Woodlawn.

Right off the bat, about fifteen minutes later, the Defendant Pina came in and filed an identification card application in the name of Elijio H. Aguillon, 305 East Woodlawn Street. Mrs. Grillo called Jordan and told him of this development. Jordan responded he would come to the studio. He instructed her to detain Pina and to look outside for a parked car since normally in a situation of this sort there would be someone outside waiting for the visitor to emerge.

Within 10 to 15 minutes, Arce and Valenzuela came into the studio. Arce

filled out an application in the name of Miguel A. Hernandez, 315 East Woodlawn. Valenzuela filled an application in the name of Tomas A. Valdez, 418 East Woodlawn.

Upon looking outside, Mrs. Grillo saw three people on the front seat of a brown Pontiac parked on the opposite side of the street about one half block from the studio. Notably, it was parked in a zone where from 4-6 p.m. no parking was allowed. Mrs. Grillo walked across, looked at the license plate, returned upstairs, and wrote the license number down. The time was approximately 4 p.m. By then, Arce, Pina, and Valenzuela had been in the studio, occupying the trap for over an hour. Grillo relayed the license number to the postal inspector who had called her.

During this time a young boy came

in and, when asked if he needed help, said that he wanted to talk with someone in the waiting room; Grillo thought, but was not sure, that he talked with Pina. Grillo never saw the suspects converse among themselves, but during the time they were waiting, she helped other customers, checked the area outside for a car, walked to the post office so that she could observe the license number, and talked to the authorities on the telephone. Arce left and walked downstairs for approximately five minutes, but he returned when Grillo called him back and asked a question.

Jordan, the seasoned trap setter, arrived on the scene about 4 p.m. After parking his car, he twice walked past the brown Pontiac, which had moved closer to the studio but was still on the opposite side of the street, being

the only car parked in the restricted zone. He saw three people, two men and a woman, sitting on the front seat in such a way that they could maintain visual contact with the studio entrance. They were looking directly at the entrance. Jordan then took up surveillance directly across the street in the lobby of the Texas Theater, from whence he could see both the parked car and the studio entrance. He saw Arce come down the stairs, look towards the Pontiac, and nod his head. Arce remained on the stair landing approximately 30 minutes, maintaining contact with the car all during that time. Jordan saw Arce go back up the stairs one time and also saw David Flores, a juvenile, go up and down the stairs twice during this period. During this time period, there was rain of varying intensity, sometimes

heavy enough for windshield wipers, sometimes sprinkling or drizzling, and at other times none at all. Grillo said that it was sprinkling when she went to the post office; Jordan testified that during the 30 minutes he maintained surveillance the rain was not hard enough to cause people on the street to take cover.

At approximately 4:30 p.m., the Pontiac left the curb and merged into traffic moving east; simultaneously, Arce left the landing, also moving east, and appeared to be going toward the curb. Jordan jumped in front of the car which had stopped while trying to merge into the center lane in heavy traffic. Postal Inspector Casillas, who for about ten minutes had been parked behind the suspect vehicle, came from the rear of the vehicle and took out the driver,

Tony Coronado. Jordan took out the other two - Sylvia Coronado, who had been sitting in the middle, and her brother, James Perez, a juvenile, who had been sitting in front of the glove compartment. Upon these developments, Arce reversed directions and headed away from the car, a very prudent maneuver could it have been successful. Jordan caught up with him at the studio entrance and took him to where the others were on the sidewalk. He then went upstairs to the identification card studio and arrested Pina and Valenzuela upon their being pointed out by Grillo. Flores was arrested also. Jordan observed that Perez had the name "Marcelino Funentes" written in ink on his hand.

All suspects were taken to the federal building, where they were put in a small room for 15-20 minutes. Sylvia

asked James where the money was. He told her it was in his back pocket. Sylvia then took the money out of his pocket and put in her pocket. All were taken to a larger room. Flores, who, like the Old Dog Trey, had been caught up because he was standing so close to the fire without realizing that there was one, testified that everybody was talking about some checks. Tony Coronado said to James that only three checks in the glove compartment would be found and told him to take the blame for them. Arce also told James to take the blame. Perez was not in an accommodating mood and refused to do so. Tony also asked Sylvia about the money, and she replied that it was in her pocket.

On an affidavit by Special Investigator James Rosinbaum, United States Postal Inspection Service, a

search warrant was obtained. The search was conducted by Casillas and Rosinbaum while Jordan watched. He saw Casillas remove three envelopes from the glove compartment. The envelopes contained treasury checks payable to Miguel A. Hernandez, 315 East Woodlawn, Elijio H. Aguillon, 305 East Woodlawn, and Tomas A. Valdez, 418 East Woodlawn.

The checks found in the glove compartment were processed for fingerprints, but no identifiable fingerprints were found on the checks or the envelopes. The car was not processed for fingerprints. Casillas testified that if the checks were exposed to moisture or wetting agents, fingerprinting would not pick up the fingerprints. The checks were wet when they were removed from the car.

A handwriting expert testified that, based on handwriting exemplars

provided by Arce, Pina, and Valenzuela, Arce had written the identification card application and signed the identification card in the name of Miguel A. Hernandez, that Pina had written and signed similar documents using the name of Elijio H. Aguillon, and that Valenzuela had written the handprinted numbers on the application and card in the name of Tomas A. Valdez.

It was stipulated that the checks in question were prepared for mailing and were mailed on May 30, 1979, from Kansas City, Kansas.

What it all comes down to is that these defendants were thoroughly trapped. Their only hope of escape - if there were a hope - is that maybe the constable, or possibly the prosecutor, blundered. We hold that there is no sound reason for hope.

[1] We, of course, could take a journey, for the hundredth time or more, through the exhaustively mapped field of evidentiary sufficiency but this case offers no justification for it, much less a necessity for it.[3/] We hold that any attack on the sufficiency of the evidence must fail.

[2] A like appraisal must be visited upon the argument that Coronado's arrest was without probable cause, see United States v. Preston, 608 F.2d 626, 632 (5th Cir. 1979), cert. denied, ___ U.S. ____, 100 S.Ct. 2162, 64 L.Ed.2d 794 (1980).

II.

Denial of Motion to Suppress

[3,4] In allowing Pina to contest the search of the Pontiac, the district court apparently relied on the "automatic standing" rule set forth in Jones

v. United States, 362 U.S. 257, 80 S.Ct. 725, 4 L.Ed. 2d 697 (1960). Jones has now been overruled by United States v. Salvucci, ___ U.S. ___, 100 S.Ct. 2547, 65 L.Ed.2d 619 (1980), which held that possession of a seized good could not be used as a substitute for a finding that the owner of the good had a legitimate expectation of privacy in the area searched. Now, the appropriate inquiry is "not merely whether the defendant had a possessory interest in the items seized, but whether he had an expectation of privacy in the area searched." See, United States v. Odum, 625 F.2d 626, 628 (5th Cir. 1980). Under Salvucci, Pina had no standing to contest the search since he had no legitimate expectation of privacy in a car registered to someone else when he was not even a passenger in it when arrested.

[5] The government concedes that Tony Coronado did have standing to challenge the search since he was driving the car when arrested. His challenge to the search is that the search warrant was obtained by the use of an affidavit which contained misrepresentations knowingly and intentionally made, or with a reckless disregard for the truth. The affidavit in question was prepared by Rosinbaum from information supplied by Jordan and Casillas.[4/]

The challenged averments in the affidavit for the search warrant are

(1) The statement in paragraph 3 that Mrs. Grillo had informed Jordan at 3:30 p.m. "that one of the individuals who had previously purchased an ID card for an address on East Woodlawn was back attempting to purchase a second ID card," and

(2) The statement in paragraph 4 that Mrs. Grillo had identified "3 subjects in a 1970 Pontiac."

[6] Mrs. Grillo had reported that "they are back," obviously referring to persons seeking cards for addresses in the specified street area. She did not say that they were, in fact, persons who individually had been there that morning. This variance was nothing more than an inaccuracy. It did not materially distort the actual fact that card seeking suspects were in her place of business and there is no dispute that these appellants were there exactly for the described purpose.

Indeed, Mrs. Grillo did not identify the occupants of the car by name, but she had seen the occupants, as had the surveilling agent. There can be no doubts that these persons were in the

car. Finally, which within itself is enough, the defendant made no substantial preliminary showing that these inaccurate statements were knowingly and intentionally false or made with a reckless disregard for the truth, see Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978).

The attack on the validity of the search warrant is rejected.

III.

Motion for Mistrial Based Upon Attempted Admission of Additional Stolen Checks

On June 23, 1979, the previously mentioned Pontiac was repossessed. The person who had sold it to Sylvia Coronado consented to a search of the car. Four more treasury checks were found in the trunk of the car, wrapped in a blanket. None were addressed to any of the de-

fendants. The government sought to introduce the checks into evidence. The jury heard nothing more than the exhibit numbers and the names of the respective payees. After objections by all defendants, a hearing was held outside the presence of the jury. The trial judge sustained the objections, as he said, "out of an abundance of caution." Record, Vol. 3, p. 187. Moreover, upon returning to the courtroom, the Court told the jury that he had sustained the objections "to the proffered exhibits 13, 14, 15 and 16" and "you are not to consider for any purpose any testimony that you have heard relative to those last four items." Record, Vol. 1, p. 189. A defense motion for a mistrial was denied. Only Tony Coronado urges on appeal that the District Court erred in denying this motion for a mistrial

because the attempted admission was so prejudicial that a cautionary instruction to the jury could not cure the prejudice.

[7] There was no error here. The jury heard nothing more than there were checks, described only by exhibit number and payee, and that the Judge had determined that these checks were not admissible in evidence, that the jury was not to consider what little it had heard about them. See, e.g., United States v. Walker, 621 F.2d 163, 168 (5th Cir. 1980); United States v. Klein, 546 F.2d 1259, 1263 (5th Cir. 1977).

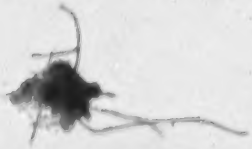
IV.

Coronado's Sentence

[8] In essence, Coronado claims that he received that maximum sentence because he refused to testify in his own

behalf. The record simply does not support this contention. The trial judge based the sentence on Coronado's previous criminal record and his role as a leader in this criminal business.

[9,10] However, the imposition of consecutive sentences for aiding and abetting possession of three pieces of mail which obviously were stolen from the mail truck at the same time conflicts with Williams v. United States, 385 F.2d 46 (5th Cir. 1967). The Williams Court held that possession of various times of stolen mail which were in the defendant's possession as a result of one set of circumstances, that is, one theft, constitutes only one offense, and the defendant could be convicted of only one offense. 385 F.2d at 47. Nevertheless, consecutive sentences may be imposed for the conspiracy



and the substantive offenses. United States v. Baldarrama, 566 F.2d 560, 570 (5th Cir.), cert. denied, 437 U.S. 906, 98 S.Ct. 3094, 57 L.Ed.2d 1136 (1978).

The government recognized this point in its brief and at oral argument. Coronado's counsel did not raise it in the District Court, in his brief, or at oral argument. Therefore, counsel for Coronado should file a Rule 35 motion on this ground for reduction of the sentence within 120 days after receipt of our mandate disposing of this appeal. Fed.R. Crim.Proc. 35, 18 U.S.C. (1976).

Arce's pro se motion for a reduction of sentence, which seems not to have been acted upon in the District Court, should have attention upon the receipt of our mandate.

V.

The other assignments of error have

been carefully examined but do not justify discussion.

AFFIRMED.

Footnotes

1/ 18 U.S.C. §371 (1976) provides in part:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner of for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

18 U.S.C. §1708 (1976) provides in part:

Whoever buys, receives, or conceals, or unlawfully has in his possession, any letter, postal card, package, bag, or mail, or any article or thing contained therein, which has been so stolen, taken, embezzled, or abstracted, as herein described, knowing the same to have been stolen, taken, embezzled, or abstracted-

Shall be fined not more than $2,000 or imprisoned not more than five years, or both. Although not mentioned in the indictment,

18 U.S.C.§2(a)(1976) states a law of principals:

Whoever commits an offense against the United States or aids, abets,

counsels, commands, induces or procures its commission, is punishable as a principal.

2/ Arce was sentenced five years on Count One of the indictment, five years on Count Two, running concurrently with Count One, five years on Count Three, running consecutively with Count One, and five years on Count Four, running concurrently with Count Three. His total sentence is 10 years.

Coronado was sentenced five years on each count with all sentences running consecutively. Therefore, his total sentence is 20 years.

Pina was sentenced four years on Count One, four years on Count Two, running concurrently with Count One, four years on Count Three, running consecutively with Count One, and four years on Count Four, running concurrently with Count Three. Thus, his total sentence is 8 years.

3/ For the standard for reviewing the sufficiency of the evidence, see Hamling v. United States, 418 U.S. 87, 94 S.Ct. 2887, 41 L.Ed.2d 590 (1974); Glasser v. United States, 315 U.S. 60, 80, 62 S.Ct. 457, 469, 86 L.Ed. 680 (1942); United States v. Malatesta, 590 F.2d 1379, 1382 (5th Cir. en banc), cert. denied, 444 U.S. 846, 100 S.Ct. 91, 62 L.Ed. 2d 59 (1979); United States v. Odum, 625 F.2d 626, 628 (5th Cir. 1980); United States v. Forrest, 620 F.2d

446, 450 (5th Cir. 1980); United States v. Barrera, 547 F.2d 1250, 1255 (5th Cir. 1977); United States v. Fox, 613 F.2d 99, 101 (5th Cir. 1980); United States v. Davis, 592 F.2d 1325, 1328 (5th Cir. 1979), cert. denied, 442 U.S. 946, 99 S.Ct. 2894, 61 L.Ed.2d 318 (1979); United States v. Gonzales, 617 F.2d 104, 106 (5th Cir. 1980). This does not, by any means, exhaust the list of cases in this field, but it is enough to cover the subject.

4/ The body of the affidavit for a search warrant reads as follows:

I, James S. Rosinbaum, Special Investigator, U.S. Postal Service, have been employed by the Postal Inspection Service since 1973, do affirm that at approximately 11:00 a.m., June 1, 1979, a U.S. Postal Service vehicle parked at East Russell and North St. Mary's St., San Antonio, Texas, was broken into by breaking the right rear window. The vehicle contained mail for delivery in that general area. The vehicle was locked and unoccupied. All mail for the 200 through 600 block of East Woodlawn was stolen which included a large number of U.S. Treasury checks.

During routine investigation with ID card establishments in San Antonio, it was determined that two ID cards had been purchased from Mrs. Billie Grillo, Master Art Studio, 148 East Houston Street,

San Antonio, Texas, in the names of Marcelino Funetes, 402 E. Woodlawn and Francisco P. Romo, 243 E. Woodlawn. These persons were contacted and they verified that they were expecting a U.S. Treasury check on this date and did not receive one.

At approximately 3:30 p.m., Mrs. Billie Grillo, contacted SA Michael Jordan, U.S. Secret Service, and informed him that one of the individuals who had previously purchased an ID card for an address on East Woodlawn was back attempting to purchase a second ID card.

Upon arrival, Billie Grillo identified 4 subjects who were in the store and 3 subjects in a 1970 Pontiac, 2-door bronze, bearing Texas license SRM 40, who were attempting to purchase ID cards.

All 7 subjects were placed under arrest by SA Michael Jordan and PI Charlie Casillas and asked to identify themselves. None of their identifications corresponded with the names and addresses on the ID cards they had purchased. Three of the subjects were sitting in the front seat of the vehicle when arrested.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA

v. No. SA-79-CR-106(3)

TONY DE LEON CORONADO

September 13, 1979

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government, the defendant appeared in person on September 5, 1979, with Shelton E. Padgett, counsel, and entered a Plea of not guilty.

There being a verdict of GUILTY, on 8/01/79; Defendant has been convicted as charged of the offense(s) of having willfully and knowingly combined, conspired, confederated and agreed with others to commit an offense against the

United States, to wit: to knowingly and unlawfully possess the contents of letters which had been stolen from the mail knowing that the letters had been stolen, in violation of Title 18, U.S.C., Section 1708, all in violation of Title 18, U.S.C., Section 371, as charged in Count One (1) of the Indictment; and, having unlawfully aided and abetted others in the possession of the contents of letters which had been stolen from the mail, and at said time and place Defendant well knew said contents of said letters had been stolen, in violation of Title 18, U.S.C., Section 1708, as charged in Counts Two (2), Three (3) and Four (4) of the Indictment.

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no suffi-

cient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of five (5) years to serve on Count 1. Ct 2: 5 years to serve to run consecutive to Count 1. Ct 3: 5 years to serve to run consecutive to Count 2. Ct 4: 5 years to serve to run consecutive to Count 3.

/s/ Thomas M. Reavley,
United States Circuit Judge

DATE: 9/13/79

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 79-5539

December 29, 1980

D.C. Docket No. SA-79-CR-106

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RALPH MEDINA ARCE,
TONY CORONADO and
CARLOS ROQUE PINA,

Defendants-Appellants.

Appeal from the
United States District Court for the
Western District of Texas

Before COLEMAN, Chief Judge, RUBIN and WILLIAMS, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Texas, and was

argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the convictions of the said district court in this cause be, and the same is hereby, affirmed.

December 29, 1980

ISSUED AS MANDATE: Feb. 27, 1981

ISSUED AS TO TONY CORONADO ONLY.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
UNIT A

No. 79-5539

February 3, 1981

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RALPH MEDINA ARCE,
TONY CORONADO and
CARLOS ROQUE PINA,

Defendants-Appellants.

Appeals from the
United States District Court for the
Western District of Texas

Before COLEMAN, RUBIN and WILLIAMS, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing of Appellant Rony Coronado filed in the above entitled and numbered cause be and the same is hereby DENIED.

/s/ James P. Coleman
United States Circuit Judge 2/3/81

Appendix D

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA

v. No. SA-79-CR-106(3)

TONY DE LEON CORONADO

VERDICT

We, the Jury, find THE DEFENDANT,

TONY DE LEON CORONADO

GUILTY to Count One of the Grand Jury Indictment

GUILTY to Count Two of the Grand Jury Indictment

GUILTY to Count Three of the Grand Jury Indictment

GUILTY to Count Four of the Grand Jury Indictment

DATE: August 1, 1979

/s/ M.G. Pope
Foreman

Appendix E